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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/558,447

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Franke Atsma

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/558,447

**Applicant(s)**

AT SMA ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☒ Claim(s) 15-19 and 23-29 is/are rejected.
- 7) ☒ Claim(s) 20-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 03/13/06, 11/15/06, 04/18/08
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 28 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 28 recites "a ground cover according to claim 22, wherein the material of the tape filament has been stretched in longitudinal direction at a stretching ratio of 1:3 – 1:6." While claim 28 is drawn to a ground cover, claim 22, from which it depends, is drawn to a yarn not a ground cover. Additionally, claim 22 already includes the stretching ratio limitation through its dependency upon claim 15. Hence, claim 28 is objected to as not further limiting the parent claim.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-19, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,045,923 issued to Kok et al.

Kok discloses a coextruded tape yarn of the ABA-type comprising a core layer B and two outer layers A (abstract). The core layer B is made of at least one polyolefin, such as

polypropylene or polyethylene, and blends thereof (col. 1, lines 55-62). The outer layers A are selected from the group of high density polyethylene (HDPE), low density polyethylene (LDPE), very low density polyethylene (VLDPE), and blends thereof (col. 2, lines 33-42). A preferred embodiment comprises a core of at least one propylene or ethylene polymer having a density of  $935 \text{ kg/m}^3$  or greater and outer layers based on at least one ethylene copolymer with one or more  $\text{C}_3 - \text{C}_8$  olefins (col. 1, lines 45-54). The core layer B is present in an amount of 60-90 wt.% of the total tape yarn weight, while the outer layers A are present in an amount of 10-40 wt.% of the total tape yarn weight (col. 2, lines 24-28 and 43-44). The tape yarn has a thickness of 50-150 microns and a stretch ratio of 6 - 10 (col. 1, lines 52-54). The tape yarn is made by coextruding the two polymers of A and B in a three layer configuration of ABA (col. 2, line 60 - col. 3, line 4).

Thus, Kok teaches the invention of applicant's claims 15-19, 26, and 27 with the exception that the yarn is for an artificial turf ground cover. However, this preamble limitation is not given patentable weight. Specifically, said limitation is descriptive of an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As such, claims 15-19, 26, and 27 are rejected as being anticipated by the cited Kok reference.

4. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0109255 issued to Weder et al.

Weder discloses a filament having a flat cross-section, wherein one side of the filament has a color and/or tint different from the other side. See abstract and sections [0006], [0008], and [0009]. Thus, claim 29 is rejected as being anticipated by the cited Weder reference.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kok reference in view of EP 259 940 issued to Terhorst et al.

Claims 23-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 259 940 issued to Terhorst et al. in view of the cited Kok reference.

Kok discloses the tape yarns are suited for textile applications such as geotextiles and agricultural applications (col. 1, lines 3-9). Kok fails to explicitly teach the tape yarns employed as pile strands in an artificial turf ground cover. However, it would have been readily obvious to employ the Kok tape yarns in such an artificial turf since it is known in the art to employ coextruded multilayered tape yarns as pile strands in artificial turf. For example, Terhorst discloses an artificial grass comprising pile strands of coextruded tape yarns (abstract and col. 1, line 51 - col. 2, line 8). Exemplary coextruded tape yarns have a three-layered structure with a 60% core layer of polypropylene and two 20% outer layers of linear low density polyethylene (LLDPE) (col. 2, lines 9-23).

Hence, it would have been readily obvious to employ the coextruded multilayered Kok tape yarns for pile strands of an artificial turf such as that disclosed by Terhorst. Motivation to do so would be to expand the textile applications of the Kok yarns. Therefore, claims 23-25 and 28 are rejected as being obvious over the cited prior art.

In the alternative, it would have been readily obvious to substitute the coextruded multilayered tape yarns of Terhorst with the Kok tape yarns since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Selection of the Kok tape yarns for the Terhorst pile yarns would have yielded predictable results to a skilled artisan. Therefore, claims 23-25 and 28 are rejected as being obvious over the cited prior art.

#### ***Allowable Subject Matter***

7. Claims 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to teach or suggest the claimed tape yarn having a core layer containing polyester and/or polyolefin material and two outer layers containing high density polyethylene, wherein said tape yarn has been stretched in a longitudinal direction at a stretch ratio of 1:3 - 1:6, and wherein the tape yarn includes *longitudinally extending grooves extending through at least one of the outer layers to the core layer*. Thus, claims 20-22 contain allowable subject matter.

8. Claim 30 is allowed. It is known in the art to employ tape filaments as pile yarns in artificial turf materials, wherein the different yarns comprise varying colors. For example, see

US 2002/0081399 issued to Prevost, abstract and US 2004/0229007 issued to Motz et al., section [0024]. However, it would not have been obvious to modify such teachings to have the varying colors on opposite sides of a single tape filament. In other words, it would not have been obvious from the cited prior art to produce an artificial turf comprising tape filament pile yarns having a flat cross-section wherein one side of the tape filament has a color and/or tint different from the color and/or tint of the other side. [Note WO 2005/058425 issued to Snopkowski, which discloses a golf practice mat having turf fibers having one side colored differently than the other side thereof (section [0014]), is not available as prior art against the present invention. Additionally, note DE 20 321 491 and WO 2004/106601 are patents of the same family as the present application.] Hence, claim 30 is allowed.

### *Conclusion*

9. The art made of record and not relied upon is considered pertinent to applicant's disclosure.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794